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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,916	02/12/2002	Robert H. Drake JR.	11-912	4237

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NIXON & VANDERHYE, PC
1100 N GLEBE ROAD
8TH FLOOR
ARLINGTON, VA 22201-4714

EXAMINER

JUSKA, CHERYL ANN

ART UNIT PAPER NUMBER

1771

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 10/072,916	Applicant(s) DRAKE, ROBERT H.	
Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 14 October 2004.
- 2a) This action is **FINAL**.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3, 5-9, 15 and 16 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3, 5-9, 15, and 16 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed October 14, 2004, has been entered. Claims 1, 5, and 6 have been amended as requested, while claims 4 and 10-14 have been cancelled. Thus, the pending claims are 1-3, 5-9, 15, and 16.
2. Said amendment is sufficient to withdraw the 102 rejection set forth in section 3 of the last Office Action. Specifically, claim 1 has been amended to include the limitations of claim 4. Since claim 4 was not rejected under 102, said anticipation rejection is hereby withdrawn.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-3 and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,601,910 issued to Murphy et al. in view of US 5,852,119 issued to Kojima et al. and/or US 5,536,778 issued to Kreckel et al.

As noted above, claim 1 has been amended to include the limitation of claim 4. as such, the 102 rejection is withdrawn, but the 103 rejection set forth for claim 4 in section 5 of the last Office Action is now applied against claim 1.

5. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,601,910 issued to Murphy et al. in view of US 5,852,119 issued to Kojima et al. and/or US 5,536,778 issued to Kreckel et al. and in further view of US 4,976,118 issued to Tough.

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Said claims are rejected for reasons analogous to those presented in section 7 of the last Office Action.

Response to Arguments

6. Applicant's arguments filed with the amendment of October 14, 2004, have been fully considered but they are not persuasive.

7. Applicant traverses the above rejection by asserting that the examiner employed improper hindsight in constructing the rejection. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The motivation to combine the teachings of the cited prior art exists in the convention of the art to employ fillers to reduce the amount of material (resin, adhesive, foam, etc.) employed. Note Kreckel, col. 1, lines 19-24, which teaches it is known in the art to employ fillers for acrylic pressure sensitive adhesives. Kreckel also teaches said use of fillers reduces cost and builds a suitable viscosity for coating said adhesive on a substrate (col. 1, lines 11-18). Thus, the motivation to combine the teachings of the references is taken from the general knowledge in the art and the references themselves, not applicant's disclosure.

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8. Applicant also argues that the references do not teach the wet-laid adhesive of claim 3.

In response, it is reiterated that the recitation is met by Murphy's teaching that the PSA coated on the underside of the underlay is applied in solution form. Hence, the limitation "wet-laid adhesive" is met.

9. Applicant further argues that the actual constituency of the required 5-7% shredded fiberglass set forth in claim 5 is not taught by the references. In response, it is reiterated that Kojima teaches fiberglass filler in amounts up to 200 pbw. As such, this includes values ranging from greater than zero to 200 pbw. The claimed range of 5-7% falls within the range disclosed by Kojima.

10. Applicant argues that the references do not teach the recited latex adhesive for the first adhesive. However, it is reiterated that Murphy teaches the PSA comprise emulsion adhesives, such as synthetic rubber latex.

11. With respect to the rejection of claims 15 and 16, applicant merely argues the lack of a teaching to the shredded fiberglass filler. However, as noted above, the rejection is adjusted to include the Kojima and Kreckel references. Therefore, applicant's argument are found unpersuasive and the above rejections are maintained.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cj
December 16, 2004

CHERYL A. JUSKA
PRIMARY EXAMINER